IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No. 3958 of 2007

Rohini Niranjankumar Upadhye ..Petitioner

vs.

Niranjankumar Laxman Upadhye ..Respondent

Shri L.T.Lalwani i/b Smt.S.I.Jaykar for petitioner.
Shri N.V.Gangal for respondent.

CORAM: S.C.DHARMADHIKARI J.
22nd August, 2007

P.C.

1. Rule. Respondent waives service. By consent petition is taken up for hearing forthwith.

2. This petition under Article 227 of the Constitution of India is directed against the order passed by the Family Court, Bandra at Mumbai on 12th January, 2007 in Petition No.A-536 of 2006.

3. By order under challenge the learned Principal Judge of the Family Court, rejected application Exh.16 which is preferred by the present petitioner/wife. That application was preferred in the petition which was instituted by the respondent/husband in Family Court claiming the following reliefs:

"a) That the Hon’ble Court be pleased to pass a decree of divorce in favour of the petitioner dissolving the marriage between the petitioner and the respondent solemnized on 23rd day of November, 2004.

b) That the Hon’ble Court be pleased to pass an order and injunction restraining the respondent, her relatives/friends, agents and/or anyone acting through or under the Respondent from entering and staying upon the petitioner’s parent’s flat situated at 6, Bimma Chaya, Mahatma Phule Road, Mulund (East), Mumbai 400 081 and at :3/16, Jaykar Smriti, Aarey Road, Goregaon (West), Mumbai 400 062 as well as at A/702, Bldg.No.6, Shree Laxmi Park-I, Lokmanya Nagar, Thane (West), 400 606.

c)...

d)....

e)....."

The petition was presented on 24th February, 2006 by the

husband claiming the above reliefs in terms of section 13(1)(1-A) of the Hindu Marriage Act, 1955 as amended.

4. The impugned order has been passed on the application of the petitioner invoking the powers of the Family Court under the Family Courts Act, 1984 and the Rules so also Order VI Rule 16 of the Code of Civil Procedure, 1908. By the said application it was prayed that the Family Court should strike off the pleadings/portion thereof to the extent indicated therein. In other words, the portion which was high lighted at Annexure A to the application (Exhibit B) was requested to be struck off on the ground that it is scandalous and causing deep embarassment to the respondent/wife. It is an abuse of process of Court and, therefore, retention of such portion in the pleadings would not be in the interest of justice. The said application was presented on 10th August, 2006.

5. A reply to the said application was filed by the husband and it was contended that such an application is not maintainable. That apart, it was contended that the pleadings are consistent with the requirement in law. It was contended that the application should not be entertained because the allegations that are made against the wife are not false. That is not even the case. All

that is alleged is that the language used in the pleadings is scandalous, torturing and indecent causing tremendous trauma. In such circumstances, there is no warrant for exercising powers conferred by order 6 Rule 16 of the Code of civil Procedure or inherent power to do justice conferred otherwise on the Family Court under the Family Courts Act, 1984.

6. It was also contended that striking of the portion would be prejudicial to the husband in as much as the details and particulars of the alleged cruelty are being set out with precision. Such details would assist the Court in deciding the controversy. It was prayed that the application be rejected.

7. I have heard Shri Lalwani for the petitioner/wife and Shri Gangal appearing for the respondent/husband. After perusing the petition and annexures thereto with their assistance so also the relevant provisions of law, in my view, the larger controversy with regard to the applicability of Order VI Rule 16 of the Code of Civil Procedure to matrimonial proceedings need not be decided in the facts and circumstances of this case. Suffice it to state that Family Courts have enough powers considering the phraseology of sections 13, 20 and 21 of the Hindu

Marriage Act, 1955 read with the Family Courts Act, 1984 to control and regulate the proceedings. If the pleadings themselves are such as would embarass either parties and are abuse of the process of Court, then, the Court has enough power to step in and prevent the same.

8. Order VI Rule 16 of the Code of Civil Procedure reads thus:

> O.VI.R.16: Striking out pleadings.- The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleadings:-
>
> (a) which may be unnecessary, scandalous, frivolous or vexatious, or;
>
> (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or vexatious, or
>
> (c) which is otherwise an abuse of the process of the Court."

9. In this context, the Family Court and all concerned, exercising powers under the Hindu Marriage Act would be well advised to follow the guidance given by the Supreme

Court. In Azhar Hussain Vs. Rajiv Gandhi (A.I.R.1986 Supreme Court 1253), the Supreme Court observed this:

> "12. Learned Counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned Counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose

any cause of action. Or the power to direct the concerned party to strike out unnnecesary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleadings. The Courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the Court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been

> conferred on the competent Court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation willnot make demands on their time or resources, will not impede their future work, and theyare free to undertake and fulfil other commitments. (Emphasis supplied)

10. It is nobody's case that this provision is inapplicable to a family Court. It is not inconsistent with sec.10 and sec.14 of the Family Courts Act etiher. Further, the nature of the proceedings before a Matrimonial Court needs to be appreciated. The Supreme Court in Hirachand Srinivas Managaonkar Vs.Sunanda (A.I.R.2001 Supreme Court 1285). In another decision, it has emphasised the importance of the institution of family and marriage. The Supreme Court observed thus:

> "10. Originally nine different grounds were available to a husband or wife for obtaining a

decree of divorce under sub-section (1) of S.13. Under Cl(viii) of the sub section a marriage could be dissolved by a decree of divorce on a petition presented by the husband or the wife on the ground that the other party has not resumed cohabitation for a period of two years or upwards after the passing of a decree for judicial separation against that party. Under clause (ix) of the sub-section, a marriage could be dissolved by a decree of divorce on a petition presented by the husband or the wife on the ground that the other party had failed to comply with a decree for restitution of congugal rights for a period of two years orupowards after the passing of a decree of resitution against that party.

11. Amending Act No.44 of 1964, which came into force on the 20th of December, 1964, effected two significant changes. Clauses (viii) and (ix) which constituted two of the nine grounds on which a marriage could be dissolved by a decree of divorce were deleted from sub-section (1) and secondly, a new sub-section i.e. sub section (1-A) was added to S.13. It is clear from these amendments introduced by the Act No.44 of 1964 that whereas

prior to the amendment a petition for divorce could be filed only by a party which had obtained a decree for judicial separation or for restitution of conjugal rights, this right is now available to either party to the marriage irrespective of whether the party presenting the petition for divorce is a decree holder or a judgment debtor under the decree for judicial separation or the decree for restitution of conjugal rights, as the case may be. This position is incontrovertible.

12. The question is whether in a petition for divorce filed under sub-section (1-A) of S.13, it is open to the Court to refuse to pass a decree on any of the grounds specified in S.23 of the Act, insofar as any one or more of them may be applicable.

13.... The amendment was not introduced in order that the provisions contained in S.23 should be abrogated and that is also not the effect of the amendment. The object of sub-section (1-A) was merely to enlarge the right to apply for divorce and not to make it compulsive that a petition for divorce presented under sub section (1-A) must be

> allowed on a mere proof that there was no cohabitation or restitution for the requisite period. The very language of S.23 shows that it governs every proceedings under the Act and a duty is cast on the Court to decree the relief sought only if the conditions mentioned in the sub-section are satisfied, and not otherwise. Therefore, the contention raised by the learned Counsel for the appellant that the provisions of S.23(1) are not relevant in deciding a petition filed under sub-section(1-A) of S.13 of the Act, cannot be accepted.
>
> 18.....At the cost of repetition it may be stated here that the object and purpose of the Act is to maintain the marital relationship between the spouses and not to encourage snapping of such relationship."

The Supreme Court in the case of Chetan Dass Vs.Kamla Devi reported in AIR 2001 S.C.1709 in para 14 of the judgment observed thus:

> 14. Matrimonial matters are matters of delicate human and emotional relationship. It demands

> mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by Statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well knit, healthy and not a disturbed and porous society. Institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straight jacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case."

11. In my view, the totallity of the facts and circumstances need to be taken into consideration. The Court should not permit the proceedings to be converted into a source of continued embarassment and harassment to a party.

12. In the facts and circumstances of the present case and considering the nature of the reliefs sought, in my view, the following portion of the petition instituted by the respondent shall stand deleted.

a) para 16 commencing with "The petitioner states that..." and ending with "....orientation and expectations" on page 21 of compilation.

b) para 17 commencing with "The petitioner states that...." and ending with "....Temple in Hyderabad for forgiveness."

c) The portion in para 19 on page 23 commencing with "The marriage was, however, consummated...." and ending with "....that of her fantasies". d) The portion in para 20 on page 23 commencing with the words "...She also used to fantasize...." and ending with the words "....to be shocking and repulsive".

e) Underlined portions of paras 33, 34 and 35 on pages 30 and 31 of the compilation.

13. Needless to clarify that by mere deletion of this portion from the pleadings does not mean that the husband

is precluded from making any statement and disclosing necessary particulars in his oral deposition before the Court. Needless to further clarify that the wife would be at liberty to cross examine the petitioner/husband if such allegations and statements are made by him on oath. Ultimately, it is for the Family Court to decide the evidentiary value of these statements and allegations. Equally, the learned Presiding Judge is at liberty to regulate and control the proceedings and based on the objections raised by either parties to disallow any question or permit any question to be answered. The evidentiary value of the material place has to be decided by the learned Presiding Officer strictly in accordance with law. Merely because the petitioner is permitted to depose on the basis of the averments in the petition during the oral deposition, does not necessarily mean that the Court has to treat that as Evidence for the purpose of proceedings. This order does not prevent the petitioner/husband and respondent/wife to tender their evidence on affidavit in lieu of examination in chief.

14. The application preferred by the respondent/wife is allowed to the aforesaid extent. This order is passed consistent with the submissions made before me and grounds referred to in the petition and more particularly ground

(d) at page 5. Thus, what is undisputed before me is that law of pleadings does not envisage pleading of evidence.

15. The impugned order stands quashed and set aside. The application (Exh.A) stands allowed to the above extent. I had called the parties in my chambers and after speaking to them I find that both being educated and able to take decisions of their own, some amicable settlement should be arrived at either resuming cohabitation or putting an end to the matrimonial relationship. However, despite two meetings, nothing fruitful could emerge from them. It is in this light that I have heard learned Counsel appearing for both sides on merits of the application.

16. Rule made absolute accordingly with no order as to costs. Considering that the petition contains allegations of cruelty which are serious in nature and in the light of the relationship between the parties, the Family Court would be well advised to decide the matter expeditiously.

(S.C.DHARMADHIKARI J.)